

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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Illinois Commerce Commission  
RAIL SAFETY SECTION

**UNITED TRANSPORTATION UNION,  
ILLINOIS STATE LEGISLATIVE BOARD**

**T03-0015**

**Petition for rulemaking to require safe walkways)  
for railroad employees in the state )**

**JOINT MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY,  
ILLINOIS CENTRAL RAILROAD COMPANY, ET AL.,  
TO STRIKE AFFIDAVIT OF AARON COMBS**

Norfolk Southern Railway Company and Illinois Central Railroad Company, et al.

(jointly, “Respondents”) hereby move to strike the affidavit attached to the Brief of United Transportation Union on Exceptions to Administrative Law Judge’s Proposed Order and Request for Oral Argument (“Brief on Exceptions”). In support of this motion, Respondents state as follows:

1. The United Transportation Union (“Petitioner”) initiated this action on February 18, 2003, by filing a petition for rulemaking. The Petitioner sought a rule from the Illinois Commerce Commission regulating walkways in railyards.

2. On October 2, 2003, Administrative Law Judge June B. Tate took evidence at the Illinois Commerce Commission. Petitioner actively participated in the hearing, including the presentation of one witness.

3. At the close of the October 2, 2003 hearing, Judge Tate asked if any parties had additions to make to the official record. Transcript of Hearing Before the Illinois

**DOCKETED**

Commerce Commission, Oct. 2, 2003 p. 258 (herein “Hearing Tr.”). Respondents tendered exhibits for the formal record. *Id.* pp. 258-59. After the submission of this evidence, Judge Tate again asked if there was anything else to add to the record. *Id.* p. 260. Petitioner never indicated there was anything additional to add to the record, nor any desire to hold the record open. *Id.* Judge Tate then officially closed the record. *Id.*

4. More than three months after the close of the record, Judge Tate issued a Proposed Order on January 7, 2004. The Proposed Order rejected the petition, largely finding Respondents’ evidence more persuasive than that offered by Petitioner.

5. On January 29, 2004, Petitioner filed its Brief on Exceptions. That brief argues from speculation about an incident at a Norfolk Southern railyard on January 14, 2004, in which a Norfolk Southern employee died. The matters discussed all come from an attached affidavit of Aaron Combs.

6. The affidavit should be stricken because the record in this case closed more than three months ago. The Illinois Administrative Code leaves no room for a party to offer new evidence after the close of the record. Moreover, the affidavit is speculative and contains hearsay within hearsay and other inadmissible material.

7. Even though the affidavit attached to the Brief on Exceptions must be stricken, there should not be any concern that the facts underlying the events of January 14, 2004, will be considered by the proper authorities. Norfolk Southern is actively investigating the accident, and it has been reported to the proper authorities. The January 14, 2004 death will not be ignored, but it does not have any place in the current proceeding, in which the record was closed four months ago.

WHEREFORE, Respondents respectfully request that the affidavit attached to the Brief on Exceptions be stricken and all references in the Brief on Exceptions to matters contained in the attached affidavit be disregarded.

Dated: February 4, 2004

Respectfully submitted,

Norfolk Southern Railway Company

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Stephen C. Carlson, an attorney, certify that I caused a copy of the attached JOINT MOTION OF NORFOLK SOUTHERN RAILWAY COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, ET AL., TO STRIKE AFFIDAVIT OF AARON COMBS, to be served on each of the parties listed on the attached service list by messenger or United States mail this 4<sup>th</sup> day of February, 2004.

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**SERVICE LIST**

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